



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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Ref: 8ENF-W-NP

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RETURN RECEIPT REQUESTED

NOV 22 2005

Jim Rearden
Public Works Director
City of Great Falls
P.O. Box 5021
Great Falls, MT 59403

Re: Order for Compliance under section
309(a) of the Clean Water Act

Dear Mr. Rearden:

Enclosed is a United States Environmental Protection Agency Region 8 (EPA) Order for Compliance ("Order") issued to the City of Great Falls ("City") for alleged violations of the City's Publicly Owned Treatment Works (POTW) Pretreatment Program. The Order specifies the nature of the violations under the Clean Water Act ("Act"), as amended, 33 U.S.C. § 1251, et seq. The authority for such action is provided to EPA under section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3).

The Order describes the actions necessary in order for the City to achieve compliance with the Act. Furthermore, the Order requires the City to notify EPA in writing within ten (10) days whether it intends to comply with the Order. EPA is also issuing an Order for Compliance to Montana Refining and its partners, concurrent with this Order. This Order requires Montana Refining to conduct additional sampling and submit a report describing what actions it will take to avoid further problems with hydrogen sulfide, including both a short-term and long-term plan. A copy of that Order is enclosed.

The Act requires the Administrator of EPA to take all appropriate enforcement actions necessary to secure prompt compliance with the statute and any orders issued there under. Section 309 of the Act provides a variety of possible enforcement actions, including the filing of a civil or criminal action (33 U.S.C. §§ 1319(b), (c), (d), and (g)). Please be advised that the issuance of this Order does not preclude the initiation of administrative penalty proceedings or civil or criminal action in U.S. District Court under sections 309(g), (b), (d) and (c) of the Act for the violations cited herein. Please review the Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of the Order.

If you have any questions regarding this letter, the enclosed Order, or any other matters pertinent to the City's compliance with the CWA, the most knowledgeable people on my staff regarding these matters for legal and technical issues, respectively, are Peggy Livingston, Enforcement Attorney, at (303) 312-6858, and Colleen Gillespie, NPDES Enforcement Unit, at (303) 312-6047.

Sincerely,

A handwritten signature in black ink, appearing to read "Carol Rushin", written in a cursive style.

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures

cc: John Arrigo, MDEQ
Kari Smith, MDEQ

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2005 NOV 22 AM 7:30

FILED
EPA REGION VIII
CLERK

IN THE MATTER OF:

The City of Great Falls
Great Falls, Montana 59403

NPDES Permit No. MT-0021920

Respondent.

) **ORDER FOR COMPLIANCE**
)
) Proceeding under Section 309(a) and 308(a)
) of the Clean Water Act
)
) Docket No. **CWA-08-2006-0002**
)
)

STATUTORY AUTHORITY

This Order for Compliance (Order) is issued pursuant to section 309(a)(3) of the Clean Water Act (the "Act"), 33 U.S.C. § 1319(a)(3), which authorizes the Administrator of the United States Environmental Protection Agency ("EPA") to issue an order requiring compliance by a person found to be in violation of sections 301, 302, 306, 307, 308, 318, or 402 of the Act, or in violation of any permit condition or limitation implementing any such sections of the Act. This Order is also issued pursuant to section 308(a) of the Clean Water Act, 33 U.S.C. § 1318(a), which authorizes the Administrator of the EPA to require reports necessary to determine compliance. These authorities have been delegated to the undersigned official.

FINDINGS OF FACT

1. The City of Great Falls ("Respondent") is a "municipality" as defined by section 502(4) of the Act, 33 U.S.C. § 1362(4).
2. A municipality is a "person" within the meaning of section 502(5) of the Act, 33 U.S.C. § 1362(5).
3. Respondent owns and operates a wastewater treatment facility located at 1600 6th St. N.E. Great Falls, Montana. This facility is a publicly-owned treatment works ("POTW") as that term is defined in 40 C.F.R. § 403.3 and will be referenced in this Order as the "POTW." The POTW discharges treated wastewater into the Missouri River and has a design capacity of 21 million gallons per day (MGD) and an average daily flow of 8.86 MGD. National Pollutant Discharge Elimination System (NPDES) permit number MT-0021920 (the "NPDES Permit"), issued by the State of Montana and effective on February 1, 2000, and administratively extended, authorizes the Respondent to discharge from the POTW in accordance with section 402 of the Act, 33 U.S.C. § 1342.
4. The Missouri River is an interstate water and "water of the United States" within the meaning of 40 C.F.R. § 122.2 and, therefore, a "navigable water" within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7).
5. Wastewater is a "pollutant" within the meaning of section 502(6) of the Act, 33 U.S.C. § 1362(6).

6. According to 40 C.F.R. § 403.8(a), "[A]ny POTW (or combination of POTWs operated by the same authority) with a total design flow greater than five (5) MGD and receiving from industrial users pollutants which Pass Through or Interfere with the operation of the POTW or are otherwise subject to Pretreatment Standards will be required to establish a POTW Pretreatment Program unless the NPDES State otherwise assumes the responsibility."
7. The State of Montana is an "NPDES State," because EPA has approved the State of Montana's NPDES program pursuant to section 402(b) of the Act, 42 U.S.C. § 1342(b). The State of Montana has neither applied for nor received EPA approval of its pretreatment program; therefore, at all times relevant to this Order, EPA has been and continues to be the "Approval Authority" within the meaning of 40 C.F.R. § 403.3(c).
8. EPA approved Respondent's Pretreatment Program on November 5, 1985 at which time Respondent became the "Control Authority" within the meaning of 40 C.F.R. § 403.12(a).
9. As the "Control Authority," the Respondent is responsible for ensuring that Industrial Users (defined in 40 C.F.R. § 403.3) discharging to the POTW comply with all Pretreatment Standards and Requirements (also defined in 40 C.F.R. § 403.3).
10. Pursuant to 40 C.F.R. § 403.8(f)(5), "The POTW shall develop and implement an enforcement response plan containing detailed procedures indicating how [it] will investigate and respond to instances of industrial user noncompliance."
11. Respondent has an EPA-approved enforcement response plan (ERP). It is titled "City of Great Falls Enforcement Response Plan for the Industrial Pretreatment Program" and is dated June 30, 2001.

12. Montana Refining Company is a petroleum refining company (standard industrial classification 2911).
13. Montana Refining Company has been discharging process wastewater to the POTW since at least February 24, 2000.
14. Montana Refining Company is an "Industrial User" within the meaning of 40 C.F.R. § 403.3(h), and a "Significant Industrial User" as defined at 40 C.F.R. 403.3(t).
15. Respondent issued an industrial wastewater permit to Montana Refining Company, effective on January 1, 2005.
16. Pursuant to 40 C.F.R. § 403.8(f)(5), the ERP and Part III, sections I.1.e & i of the NPDES Permit, the Respondent is required to enforce all applicable pretreatment standards and requirements and obtain remedies for noncompliance by any Industrial User discharging to the POTW.
17. On September 28, 2005, Respondent determined that Montana Refining Company's discharge to the POTW was causing the presence of hydrogen sulfide, a toxic gas, in the sewer system leading to the treatment plant (which is itself part of the POTW, as defined in 40 C.F.R. § 403.3(o)) in a concentration that posed an acute risk to worker health. The hydrogen sulfide data are included in Appendix A. This discharge is a violation of 40 C.F.R. § 403.5(b)(7), which prohibits the discharge of any pollutant which will result in the presence of toxic gases in the POTW in a quantity which may cause acute worker health and safety problems.

18. The hydrogen sulfide in the sewer system has resulted in human health impacts. At least one City employee has reported headaches lasting as much as 18 hours after sampling for hydrogen sulfide along this sewer line. The symptoms of short-term exposure to hydrogen sulfide gas include respiratory irritation, difficulty breathing, headaches, and nausea.
19. Pursuant to 40 C.F.R. 403.8(f)(2)(vii), an Industrial User is in significant noncompliance (SNC) if its violation meets one or more of the listed criteria including, but not limited to, any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or the environment or results in the POTW's exercise of its emergency authority.
20. Respondent's ERP provides that a level 4 response is the appropriate action for "a discharge that causes...gross violation of General Pretreatment Regulations [40 C.F.R. part 403]." Appropriate level 4 responses include suspending industry service and/or conducting a show cause hearing regarding termination of sewer service.
21. Because the discharge of hydrogen sulfide gas to the POTW constitutes a gross violation of the General Pretreatment Regulations, a level 4 response is required by the ERP.
22. Respondent issued a level 3 Notice of Violation on October 25, 2005 for Montana Refining Company's violation of 40 C.F.R. § 403.5(b)(7), instead of the level 4 response required by the ERP. The level 3 Notice of Violation requires that Montana Refining come into compliance within 30 days.

23. 40 C.F.R. §§ 403.8(f)(1)(iii)(A) through (E) and Part III, section I.1.f of the NPDES Permit require the Respondent to institute a control mechanism for significant industrial users containing, at a minimum: a statement of duration of no more than 5 years; a statement of non-transferability without prior notification; effluent limitations; self monitoring, sampling, notification and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type; and a statement of applicable criminal and civil penalties for violation of pretreatment standards and requirements.
24. The permit Respondent issued to Montana Refining Company does not contain a statement of non-transferability, notification and recordkeeping requirements, or a statement of civil and criminal penalties.

VIOLATIONS

Count I (Failure to Enforce Pretreatment Program)

25. The Respondent's failure to initiate appropriate enforcement action for Montana Refining Company's violation of specific pretreatment prohibitions constitutes violation of the ERP, 40 C.F.R. § 403.8(f)(5), and Part III, sections I.1.e & i of the NPDES Permit.

Count 2 (Inadequate control mechanism)

26. The Respondent's failure to include all required elements in the permit issued to Montana Refining Company is in violation of 40 C.F.R. § 403.8(f)(1)(iii) and Part III, section I.1.f of the NPDES Permit.

ORDER

The Respondent is ordered to perform the following actions:

27. Upon receipt of this Order, Respondent shall immediately take all action necessary to properly enforce its approved Pretreatment Program in accordance with the approved ERP.
28. Within ten (10) days of receipt of this Order, the Respondent shall give written notice to EPA of its intent to comply with the requirements of this Order.
29. Within thirty (30) days of receipt of this Order, Respondent shall submit a report to EPA describing the actions proposed and/or taken to prevent all pretreatment violations cited by this Order from recurring. This report shall include specific dates for the actions to be taken and references to the violations prompting the actions.
30. Respondent shall sample three times per week for hydrogen sulfide in the sewer line into which Montana Refining Company discharges until written notification is provided by EPA that the sampling frequency is to be changed or can be discontinued. Sampling will include at least the POTW headworks and manholes 4049, 4041, 4027, 4071, 4069, 4068, and 4067. Sample results will be faxed to EPA weekly along with the certification in paragraph 37. If at any time the concentration of hydrogen sulfide in the sewer line exceeds 10 parts per million (ppm), Respondent will immediately notify EPA and Montana Refining Company via telephone. Sampling must be conducted in such a manner as to not endanger the life or health of those conducting the sampling.

31. Within forty-five (45) days after the end of each calendar quarter Respondent shall submit to EPA a summary of all Industrial User violations identified during the previous quarter, and the enforcement response planned or taken. This reporting requirement shall continue until EPA provides written notice that it may cease.
32. Within sixty (60) days of receipt of this Order, Respondent shall review all industrial user permits and, where necessary, amend them to include all information required in 40 C.F.R. § 403.8(f)(1)(iii) and Part III, section I.1.f of the NPDES Permit.
33. By December 31, 2005, Respondent shall provide a copy to EPA of the newspaper notice indicating that Montana Refining Company has been in significant noncompliance, as required by 40 C.F.R. § 403.8(f)(2)(vii).
34. Upon written notice by EPA, Respondent will submit an itemized list of all costs incurred to implement the actions specified in paragraphs 29 and 32.
35. All notices and reports required by this Order to be given to EPA shall be provided to:

Colleen Gillespie (8ENF-W-NP)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466
gillespie.colleen@epa.gov
Fax: 303-312-6409
Phone: 303-312-6047

37. All reports and information required by this Order shall include the following certification statement, to be signed and dated by an individual meeting the definition in 40 C.F.R. § 122.22(a)(3) of a principal executive officer or ranking elected official.

I hereby certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations.

38. Any failure to comply with the requirements of this Order shall constitute a violation of said Order and may subject Respondent to penalties as provided under the section 309 of the Act, 33 U.S.C. § 1319.
39. This Order does not constitute a waiver or modification of the terms and conditions of the Respondent's NPDES permits which remains in full force and effect.
40. This Order does not constitute a waiver or election by EPA to forego any civil or criminal action to seek penalties, fines or other relief as it may deem appropriate under the Act. Be advised that section 309(d) of the Act, 33 U.S.C. § 1319(d), authorizes the imposition of civil penalties of up to \$32,500 per day for each violation of the Act, while section 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the Act.

41. Nothing in this Order shall be construed to preclude the institution of further action under section 309 of the Act, 33 U.S.C. § 1319, for those violations cited herein or to relieve Respondent from responsibilities, liabilities, or penalties established pursuant to any applicable Federal and/or State law or regulation.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant.

Date: 11/18/2005



Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice

Appendix A

manhole	hydrogen sulfide in ppm						
	09/28/05	10/6/2005	10/13/2005	10/19/2005	10/20/2005	10/26/2005	11/2/2005
4049	100.0	6	6	248	248	0	15
4041	270.0	3	1	200	200	0	21
4027	400.0	11	21	179	179	0	21
4071	200.0	-	-	229	229	1	25
4069	600.0	300	20.3	200	200	1	47
4068	500.0	225	50	200	200	1	77
4067	500.0	150	140	140	140	2	63
3412	26.0						
4024	390.0						
4025	380.0						
4028	290.0						
4029	250.0						
4030	170.0						
4031	150.0						
4032	150.0						
4033	180.0						
4034	180.0						
4035	120.0						
4036	180.0						
4037	-						
4038	150.0						
4039	-						
4040	280.0						
4042	250.0						
4043	250.0						
4044	260.0						
4045	240.0						
4046	240.0						
4047	250.0						
4048	200.0						
4070	270.0						
4072	170.0						
4073	270.0						
4074	280.0						
Ag Park Wet Well	1.0						

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the ORDER FOR COMPLIANCE was hand-carried to the Regional Hearing Clerk, EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado, and that true copies of the same were sent as follows:

Via certified mail to:

Jim Rearden
Public Works Director
City of Great Falls
P.O. Box 5021
Great Falls, MT 59403

NOV 22 2005

Date

Gayle Le Arvel
for Judith McTernan

Bcc: Colleen Gillespie, ENF-W-NP
Melanie Pallman, ENF-W-NP
Peggy Livingston, ENF-L
Rosemary Rowe, MO
Brenda Cazier, ENF-PT
Reading File

Addressees:

John Arrigo, Administrator
Enforcement Division
Department of Environmental Quality
PO Box 200901
Helena, MT 59620-0901

Kari Smith, Supervisor
Compliance and Support Unit
Water Protections Bureau
Department of Environmental Quality
PO Box 200901
Helena, MT 59620-0901